

May 21, 2010

**BEFORE THE JUDICIAL PANEL
ON MULTIDISTRICT LITIGATION**

**FILED
CLERK'S OFFICE**

**IN RE: TOYOTA MOTOR CORP.
ANTI-LOCK BRAKE MARKETING,
SALES PRACTICES, AND PRODUCTS
LIABILITY LITIGATION**

MDL Docket No. 2172

**MOVANTS' REPLY IN FURTHER SUPPORT OF
TRANSFER OF ACTIONS PURSUANT TO 28 U.S.C. § 1407**

Michael Choi, Alessandra Del Real, and Jessica M. Kramer ("Movants"), plaintiffs in *Choi v. Toyota Motor Corp., et al.*, No. 8:10-cv-00154; *Del Real v. Toyota Motor Corp., et al.*, No. 8:10-cv-00173; and *Kramer v. Toyota Motor Corp., et al.*, No. 2:10-cv-01154, respectively, actions currently pending in the U.S. District Court for the Central District of California before the Honorable Cormac J. Carney, respectfully submit this reply ("Reply") in further support of Movants' Motion for Transfer of Actions to the U.S. District Court for the Central District of California Pursuant to 28 U.S.C. § 1407 for Coordinated Pretrial Proceedings ("Motion") (Pleading No. 1).¹

**No Parties Oppose Movants' Motion for
Transfer of Actions for Coordinated Pretrial Proceedings**

The Motion requests that the Judicial Panel on Multidistrict Litigation ("Panel") enter an Order transferring the cases listed in the Schedule of Actions (attached as Exhibit A to Movants'

¹ As noted below, when Movants' Motion was filed, their cases were pending before the Honorable A. Howard Matz. Since that time, each of their cases, together with *Creighton, et al. v. Toyota Motor Corp., et al.*, No. 10-cv-00946 (C.D. Cal.), have been transferred to Judge Carney.

Brief in Support of their Motion)² to the Central District of California. As of May 12, 2010, the last day to file a response consistent with the Panel's briefing schedule, three briefs in response to the Motion had been filed.

All parties that have responded to the Motion **support** Movants' request.³ Plaintiff in *Stadler v. Toyota Motor North America Inc., et al.*, No. 2:10-cv-00030 (E.D. Ky.), filed a brief in response to the Motion stating that she agreed that "the braking cases should be consolidated and transferred to the Central District of California." (Pleading No. 5, p.2). On May 12, 2010, plaintiff in *Scholten v. Toyota Motor Corp., et al.*, No. 3:10-cv-00295 (N.D. Tex.), filed a brief in response to the Motion stating that he "fully agrees with the arguments and authorities presented" by Movants. (Pleading No. 6, p.1). On May 12, 2010, plaintiffs in *Creighton, et al. v. Toyota Motor Corp., et al.*, No. 10-cv-00946 (C.D. Cal.) ("*Creighton* Plaintiffs"), filed a brief in response to the Motion stating "that this Panel should transfer all of the actions to the United States District Court for the Central District of California. . . and specifically, to the Honorable Cormac J. Carney." (Pleading No. 7, p. 14).⁴

² Movants have attached hereto an updated Schedule of Actions (Exhibit A) that include, in addition to the actions originally identified, the following: (1) *Li v. Toyota Motor Sales, U.S.A., Inc., et al.*, No. 2:10-cv-01248 (C.D. Cal.), an action identified on May 13, 2010 as related (Pleading No. 8); and (2) additional actions not already before the Panel for which Movants have filed a Notice of Related Action contemporaneously herewith consistent with this Court's May 3, 2010 Conditional Transfer Order and Simultaneous Separation and Remand of Certain Claims. Movants identify and seek to include in these proceedings the allegations in *Gally, et al. v. Toyota Motor Corp., et al.*, No. 1:10-cv-00854 (E.D.N.Y.) and *Glardon v. Toyota Motor Engineering & Manufacturing North America, Inc., et al.*, No. 2:10-cv-00179 (S.D. Oh.) that solely relate to issues with the braking system of certain Toyota vehicles.

³ On May 12, 2010, Movants were served by Toyota Motor Corporation, Toyota Motor Sales, U.S.A., Inc., Toyota Motor North America, Inc., Toyota Motor Engineering & Manufacturing North America, Inc., and Toyota Motor Manufacturing Kentucky, Inc. (collectively, "Toyota" or "Defendants") with a response supporting the Motion, but have been informed by the Clerk of the Panel that Toyota is revising its response in accordance with the instructions of the Panel and will refile their papers. Movants were not informed of the nature of those revisions, but Defendants have agreed orally to support the Motion and anticipate that Toyota's revised response will support the Motion.

⁴ In their brief, the *Creighton* Plaintiffs expend considerable effort presenting an opposition to Movants' request for the Panel to "consolidate" the relevant actions. However, the Motion requests that the Panel *transfer* the relevant actions for coordinated pretrial proceedings. It is well established that whether and to what extent actions

Given the unanimous consent of the parties, Movants submit that the Panel should grant the Motion. *See In re Am. Honda Motor Co., Oil Filter Prods. Liab. Litig.*, 416 F. Supp. 2d 1368, 1369 (J.P.M.L. 2006) (“We are persuaded that the Central District of California is an appropriate transferee forum for this docket, in accordance with the unanimous support of the parties.”).

All ABS Actions Pending in U.S. District Court in California Are Now Pending in the Central District of California Before the Honorable Cormac J. Carney

It is true, as the Motion states, that “[t]here are numerous qualified judges in the Central District of California.” (Pleading No. 1, p.5-6). Accordingly, Movants identified several judges in the Central District of California the Panel should consider in the event it determined to centralizes the claims (“ABS Actions”) arising out of a material defect in the anti-lock braking system of 2010 model year Toyota Prius automobiles and 2010 model year Lexus HS 250h automobiles that causes a momentary loss of braking capability and Toyota’s conduct regarding same.⁵ *Id.* Specifically, Movants identified Judge James V. Selna in the Southern Division of California before whom MDL-2151 had just been centralized; Judge Cormac J. Carney to whom the first-filed of the ABS Actions, *Choi v. Toyota Motor Corp., et al.*, Case No. 8:10-cv-00154 (C.D. Ca. filed Feb. 8, 2010), had been assigned; and Judge A. Howard Matz before whom the greatest number of ABS Actions were pending at the time. *Id.*

should be coordinated or consolidated a matter left to the discretion of the transferee court. *In re Stanford Entities Secs. Litig.*, 655 F. Supp. 2d 1360, 1361 (J.P.M.L. 2009) (citing *In re Equity Funding Corp. of America Sec. Litig.*, 375 F. Supp. 1378, 1384 (J.P.M.L. 1974) (“It is the province of the Panel to decide whether in the first instance the litigation should be *transferred* for coordinated or consolidated pretrial proceedings. It is the province of the transferee judge to determine whether and to what extent the pretrial proceedings should be coordinated or consolidated.”) (emphasis in original).

⁵ As explained in footnote three, Movants anticipate that Toyota will file a revised response to the Motion in the near future that, in addition to supporting the Motion, will request that the Panel expand, for all intents and purposes, Movants’ definition of ABS Actions to include actions making similar claims but which arise out of other Toyota hybrid models, such as those identified by the *Creighton* Plaintiffs. In connection, Movants’ anticipate that Toyota will also request the Panel to rename this litigation *In re: Toyota Hybrid Brake Litigation*. In the event Toyota makes such requests, Movants are not opposed to the Panel granting them.

However, soon after Movants filed their Motion with the Panel, all of the ABS Actions pending in California⁶ were transferred to Judge Selna following the Panel's April 9, 2010 Transfer Order centralizing eleven actions in *In re: Toyota Motor Corp. Unintended Acceleration Marketing, Sales Practices, and Products Liability Litigation*, No. 2151 (the "Transfer Order"). The transfer of the ABS Actions pursuant to the Transfer Order was inappropriate because, as the Motion explains in greater detail, the ABS Actions **do not** involve allegations of sudden unintended acceleration. Judge Selna thus ordered on April 16, 2010 that "[a]ny party believing that transfer to the MDL docket is improvident because the party's case does not involve allegations of sudden unintended acceleration may file an emergency application for remand." (Exhibit B). In accordance with the Court's order, Movants filed emergency applications for remand. (Exhibit C; Exhibit D). On April 30, 2010, Judge Selna ordered the ABS Actions pending before him to be remanded to Judge Carney. (Exhibit E). In so ordering, Judge Selna found that "these cases involve allegations related to the braking systems" in the certain Toyota vehicles and that "Judge Carney has indicated his willingness to accept the additional case[s]." *Id.* On May 4, 2010, Judge Carney consented to the transfer. (Exhibit F).

Today, all of the ABS Actions in the U.S. District Court in California are pending in the Central District of California before Judge Carney. *See* Exhibit A. For the foregoing reasons, Movants submit that the Panel should grant the Motion and centralize the ABS Actions in the U.S. District Court, Central District of California, before the Honorable Cormac J. Carney.

⁶ There are currently five ABS Actions pending in the Central District: *Choi v. Toyota Motor Corp., et al.*, No. 8:10-cv-00154, *Del Real v. Toyota Motor Corp., et al.*, No. 8:10-cv-00173, *Creighton, et al. v. Toyota Motor Corp., et al.*, No. 10-cv-00946, *Kramer v. Toyota Motor Corp., et al.*, No. 10-CV-01154, and *Li v. Toyota Motor Sales, U.S.A., Inc., et al.*, No. 2:10-cv-01248.

Dated: May 19, 2010

Respectfully submitted,

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May 21, 2010

FILED
CLERK'S OFFICE

EXHIBIT A

**BEFORE THE JUDICIAL PANEL
ON MULTIDISTRICT LITIGATION**

**IN RE: TOYOTA MOTOR CORP.
ANTI-LOCK BRAKE MARKETING,
SALES PRACTICES, AND PRODUCTS
LIABILITY LITIGATION**

MDL Docket No. 2172

SCHEDULE OF ACTIONS¹

No.	Case Caption	Court	Civil Action No.	Judge
1	Plaintiffs: Johnny E. Griffin, individually and on behalf of all others similarly situated Defendants: Toyota Motor Corporation, and Toyota Motor Sales, U.S.A., Inc.	M.D. Alabama	1:10-cv-114	Chief Judge Mark E. Fuller
2	Plaintiffs: Michael Choi, individually and on behalf of all others similarly situated Defendants: Toyota Motor Corporation, and Toyota Motor Sales, U.S.A., Inc.	C.D. California	8:10-cv-154	Judge Cormac J. Carney
3	Plaintiffs: Alexsandra Del Real, individually and on behalf of all others similarly situated Defendants: Toyota Motor Corporation, and Toyota Motor Sales, U.S.A., Inc.	C.D. California	8:10-cv-173	Judge Cormac J. Carney

¹ As discussed in Movants' Reply in further Support of Transfer of Actions Pursuant to 28 U.S.C. § 1407, only the claims in *Gally, et al. v. Toyota Motor Corp., et al.* and *Gladson v. Toyota Motor Engineering & Manufacturing North America, Inc.* that relate to the ABS Actions should be included in these proceedings. Movants take the same position with respect to the claims in *Li v. Toyota Motor Corp., et al.*

No.	Case Caption	Court	Civil Action No.	Judge
4	<p>Plaintiffs: Lisa Creighton and Miriam Ramirez, individually and on behalf of themselves and on behalf of all others similarly situated</p> <p>Defendants: Toyota Motor Corporation, and Toyota Motor Sales, U.S.A., Inc.</p>	C.D. California	2:10-cv-946	Judge Cormac J. Carney
5	<p>Plaintiffs: Jessica M. Kramer, individually and on behalf of themselves and on behalf of all others similarly situated</p> <p>Defendants: Toyota Motor Corporation, Toyota Motor Sales, U.S.A., Inc., Toyota Motor North America, Inc., Lexus, and Does 1 through 10</p>	C.D. California	2:10-cv-1154	Judge Cormac J. Carney
6	<p>Plaintiffs: Lu Li, individually and on behalf of themselves and on behalf of all others similarly situated</p> <p>Defendants: Toyota Motor Corporation, Toyota Motor Sales, U.S.A., Inc., Toyota Motor North America, Inc., and Does 1 through 500, inclusive.</p>	C.D. California	2:10-cv-1248	Judge Cormac J. Carney

No.	Case Caption	Court	Civil Action No.	Judge
7	Plaintiffs: Christine Stadler Defendants: Toyota Motor Corporation, Toyota Motor Sales, U.S.A., Inc., Toyota Motor North America, Inc., Toyota Motor Engineering & Manufacturing North America, Inc., and Toyota Motor Manufacturing Kentucky, Inc.	E.D. Kentucky	2:10-cv-30	Judge William O. Bertelsman
8	Plaintiffs: Bridgette Scott, individually and on behalf of all persons similarly situated Defendants: Toyota Motor Sales, U.S.A., Inc., Toyota Motor North America, Inc., and General Motors, LLC	D. Maryland	8:10-cv-450	Judge Roger W. Titus
9	Plaintiffs: Lena Gally and Christine Carr, , individually and on behalf of themselves and on behalf of all others similarly situated Defendants: Toyota Motor Corporation, Toyota Motor Sales U.S.A., Inc., Toyota Motor Engineering & Manufacturing North America, Inc., and Toyota Financial Services Americas Corp.	E.D. New York	1:10-cv-00854	Judge Roslynn R. Mauskopf

No.	Case Caption	Court	Civil Action No.	Judge
10	<p>Plaintiffs: Jennifer Lee Glardon, individually and on behalf of themselves and on behalf of all others similarly situated</p> <p>Defendants: Toyota Motor Engineering & Manufacturing North America, Inc., Toyota Motor Manufacturing Kentucky, Inc., Toyota Motor Sales, U.S.A., Inc., and Toyota Lease Trust</p>	S.D. Ohio	2:10-cv-00179	Judge Michael H. Watson
11	<p>Plaintiffs: Michael H. Scholten, individually and on behalf of all others similarly situated</p> <p>Defendants: Toyota Motor Corporation, and Toyota Motor Sales, U.S.A., Inc.</p>	N.D. Texas	3:10-cv-295	Chief Judge Sidney A. Fitzwater

Dated: May 19, 2010

Respectfully submitted,

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EXHIBIT B

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. **8:10ML2151 JVS (FMOx)**

Date April 16, 2010

2:10CV00946 JVS(FMOx)

2:10CV01154 JVS(FMOx)

2:10CV01248 JVS(FMOx)

Title

**IN RE: TOYOTA MOTOR CORP. UNINTENDED
ACCELERATION MARKETING, SALES PRACTICES,
AND PRODUCTS LIABILITY LITIGATION**

Lisa Creighton, et al v. Toyota Motor Sales U.S.A., Inc. et al

Jessica M. Kramer v. Toyota Motor North America, Inc. et al

Lu Li v. Toyota Motor North America, Inc. et al

Present: The James V. Selna
Honorable

Karla J. Tunis

Not Present

Deputy Clerk

Court Reporter

Attorneys Present for Plaintiffs:

Attorneys Present for Defendants:

Not Present

Not Present

Proceedings: (In Chambers) Order Re Applications for Remand

These cases were filed in the Central District of California and were transferred to the MDL docket because they had previously been low-numbered under Central District's rules.

Any party believing that transfer to the MDL docket is improvident because the party's case does not involve allegations of sudden unintended acceleration may file an emergency application for remand. Any response to the application shall be filed within three days.

0 : 00

Initials of Preparer

kjt

EXHIBIT C

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12 Attorneys for Plaintiff
13 JESSICA M. KRAMER on behalf of
14 herself and all others similarly situated

15 **UNITED STATES DISTRICT COURT**
16 **CENTRAL DISTRICT OF CALIFORNIA**
17 **SOUTHERN DIVISION**

18 JESSICA M. KRAMER, an individual, on
19 behalf of herself and all others similarly
20 situated,

21 Plaintiff,

22 v.

23 TOYOTA MOTOR CORPORATION;
TOYOTA MOTOR SALES, U.S.A.,
INC.;
24 TOYOTA MOTOR NORTH AMERICA,
INC., LEXUS and
25 DOES 1 through 10, inclusive,

26 Defendants.
27
28

CASE NO.: cv-10-1154 JVS (FMOx)

CLASS ACTION

**PLAINTIFF JESSICA M.
KRAMER'S EMERGENCY
APPLICATION FOR REMAND TO
MULTIDISTRICT LITIGATION
PANEL**

**[FILED PURSUANT TO THE
COURT'S ORDER DATED APRIL
16, 2010]**

Honorable James V. Selna Presiding

MEMORANDUM OF POINTS AND AUTHORITIES

Pursuant to this Court's April 16, 2010 Minutes of in Chambers Order (the "Order"), plaintiff Jessica M. Kramer ("Plaintiff") hereby moves this Court for remand of this action, together with *Choi v. Toyota Motor Corp., et al.*, Case No. 8:10-cv-154, and *Del Real v. Toyota Motor Corp., et al.*, Case No. 8:10-cv-173, two related matters currently pending before this Court, to the Multidistrict Litigation Panel ("MDL Panel") as follows:¹

On April 16, 2010, this Court issued an Order permitting a party to file an emergency motion for remand to the MDL Panel if that party believes his/her case was improperly transferred to the MDL docket in *In re: Toyota Motor Corp. Unintended Acceleration Marketing, Sales Practices and Products Liability Litigation*, MDL No.2151. As such, Plaintiff seeks the foregoing relief since the above captioned action did **not** involve the sudden unintended acceleration ("SUA") of certain Toyota vehicles, but rather braking system defects which are wholly unrelated to the SUA allegations.

Plaintiff's claims arise from an alleged material defect in the ***anti-locking brake system*** ("ABS") of 2010 model year Toyota Prius automobiles and 2010 model year Lexus HS 250h automobiles that causes a momentary loss of braking capability (the "ABS Cases"). Three other such actions have been filed in the Central District of California and six other actions have been filed in other courts throughout the country. An MDL motion was made, and accepted by the MDL Panel, with respect to the ABS Cases on April 14, 2010 ("ABS MDL Motion"). A copy of the motion and

¹ Michael Choi, plaintiff in *Choi v. Toyota Motor Corp., et al.*, Case No. 8:10-cv-154, an action pending in the U.S. District Court for the Central District of California, and Alexandra Del Real, plaintiff in *Del Real v. Toyota Motor Corp., et al.*, Case No. 8:10-cv-173, an action pending in the U.S. District Court for the Central District of California, hereby join in plaintiff Jessica M. Kramer's emergency motion and will file a "Notice of Joinder" to that effect in each of their respective cases.

1 accompanying brief (without exhibits) are annexed to the Declaration of Robert J.
2 Stein, III as *Exhibit 1*, filed herewith (the "Stein Decl.").

3 Prior to the filing of the ABS MDL Motion, on April 9, 2010, the MDL Panel
4 issued a Transfer Order ("Transfer Order") in *In re: Toyota Motor Corp. Unintended*
5 *Acceleration Marketing, Sales Practices and Products Liability Litigation*, MDL
6 No.2151 (No. 67), regarding a group of cases which arise from claims related to the
7 ***sudden unintended acceleration*** of certain models of Toyota vehicles (the "SUA
8 Actions"). To the best of Plaintiff's knowledge, the SUA Actions and the ABS
9 Actions arise from ***completely different facts*** and affect two different groups of
10 Toyota vehicles.

11 Despite the foregoing, pursuant to Orders of the Clerk of the Central District of
12 California (the "Clerk"), dated April 12, 2010, the above captioned action was
13 transferred from the Honorable A. Howard Matz to the Honorable James V. Selna.
14 *See Exhibit 2* attached to the Stein Decl. However, Plaintiff believes that the Clerk
15 made that transfer in the mistaken belief that the above captioned action was one of
16 the SUA Actions which should have been assigned to this Court pursuant to the
17 Transfer Order.²

18 Consequently, while Plaintiff certainly does not take issue with the above
19 captioned action being assigned to this Court as part of an ABS Cases MDL action,
20 for the foregoing reasons, Plaintiff respectfully requests that this Court remand this
21 action, together with *Choi v. Toyota Motor Corp., et al.*, Case No. 8:10-cv-154, and
22 *Del Real v. Toyota Motor Corp., et al.*, Case No. 8:10-cv-173, two related matters

23 ///

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26 _____
27 ² That point was raised in the ABS MDL Motion (Exhibit 2, fn.2) with respect to the
28 *Kramer* action only because the movants were not yet aware of the transfer of *Del Real*.

1 currently pending before this Court, to the MDL Panel pursuant to Rule 7.6(c) (ii) of
2 the *Rules of Procedure of the Judicial Panel on Multidistrict Litigation*, or as this
3 Court otherwise deems just and proper.

4
5 DATED: April 19, 2010

By: 

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13 JESSICA M. KRAMER on behalf of
14 herself and all others similarly situated

15 **UNITED STATES DISTRICT COURT**
16 **CENTRAL DISTRICT OF CALIFORNIA**
17 **SOUTHERN DIVISION**

18 JESSICA M. KRAMER, an individual, on
19 behalf of herself and all others similarly
20 situated,

21 Plaintiff,

22 v.

23 TOYOTA MOTOR CORPORATION;
TOYOTA MOTOR SALES, U.S.A.,
INC.;
24 TOYOTA MOTOR NORTH AMERICA,
INC., LEXUS and
25 DOES 1 through 10, inclusive,

26 Defendants.
27
28

CASE NO.: cv-10-1154 JVS (FMOx)

CLASS ACTION

**DECLARATION OF ROBERT J.
STEIN III IN SUPPORT OF
PLAINTIFF JESSICA M.
KRAMER'S EMERGENCY
APPLICATION FOR REMAND TO
MULTIDISTRICT LITIGATION
PANEL**

**[FILED PURSUANT TO THE
COURT'S ORDER DATED APRIL
16, 2010]**

Honorable James V. Selna Presiding

1 I, ROBERT J. STEIN III, declare as follows:

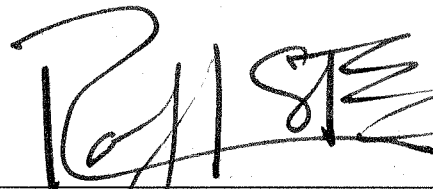
2 1. I am a Shareholder with the law firm of Adorno Yoss Alvarado & Smith,
3 a Professional Corporation, attorneys of record herein for Plaintiff JESSICA M.
4 KRAMER in the above-captioned action ("Action"). I have been duly admitted to
5 practice law in the State of California. If called as a witness in this Action, I am
6 competent to testify of my own personal knowledge, to the best of my recollection, as
7 to the matters set forth in this Declaration.

8 2. My Declaration is submitted in support of Plaintiff Jessica M. Kramer's
9 Emergency Application for Remand to Multidistrict Litigation Panel.

10 3. **Exhibit 1** is a true and correct copy of the MDL motion and
11 accompanying brief (without exhibits) filed by Jessica M. Kramer's on April 14,
12 2010.

13 4. **Exhibit 2** is a true and correct copy of the Order of the Clerk of the
14 Central District of California dated April 12, 2010, the above-captioned action
15 transferring the case from the Honorable A. Howard Matz to the Honorable James V.
16 Selna.

17 I declare under penalty of perjury under the laws of the State of California that
18 the foregoing is true and correct, and that this declaration is executed on April 19,
19 2010, at Santa Ana, California.

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21 

22 ROBERT J. STEIN III
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EXHIBIT 1

**BEFORE THE JUDICIAL PANEL
ON MULTIDISTRICT LITIGATION**

**IN RE: TOYOTA MOTOR CORP.
ANTI-LOCK BRAKE PRODUCTS
LIABILITY LITIGATION**

MDL Docket No. _____

**BRIEF IN SUPPORT OF PLAINTIFFS' MOTION FOR
TRANSFER OF ACTIONS PURSUANT TO 28 U.S.C. § 1407**

Michael Choi, Alexandra Del Real, and Jessica M. Kramer, plaintiffs in *Choi v. Toyota Motor Corp., et al.*, Case No. 8:10-cv-154; *Del Real v. Toyota Motor Corp., et al.*, Case No. 8:10-cv-173; and *Kramer v. Toyota Motor Corp., et al.*, Case No. CV 10-01154(FMOx), respectively, actions currently pending in the U.S. District Court for the Central District of California ("Movants"), respectfully submit this brief in support of their Motion for Transfer of Actions to the U.S. District Court for the Central District of California Pursuant to 28 U.S.C. § 1407 for Coordinated Pretrial Proceedings.

Factual Background

Movants' claims arise out of a material defect in the anti-lock braking system ("ABS") of 2010 model year Toyota Prius automobiles and 2010 model year Lexus HS 250h automobiles (collectively, the "Vehicles") that causes a momentary loss of braking capability (the "Brake Defect") and Toyota's conduct regarding same.¹ To Movants' knowledge, ten related actions have been filed that arise from the same or substantially identical transactions, raise substantially identical questions of law and fact, and will require substantial duplication of labor if heard by different judges (the "ABS Actions"). Of the ten actions, four (including Movants' actions) are presently pending in the Central District of California, two in the California Superior Court for

¹ For the purposes of this motion, "Toyota" refers to Toyota Motor Corporation, Toyota Motor Sales, U.S.A., Inc., and Toyota Motor North America, Inc.

Los Angeles County, and one each in the Middle District of Alabama, Eastern District of Kentucky, the District of Maryland and the Northern District of Texas. *See* Schedule of Actions (Exhibit A); Proof of Service (Exhibit B); Related Case Complaints and Dockets (Exhibit C); *see also* Notice of Related Cases; and Notice of Pendency of Other Actions or Proceedings, *Kramer v. Toyota Motor Corporation, et al.*, No. 10-cv-1154-AHM-FMO (C.D. Cal. Mar. 3, 2010) (Exhibit D); Notice of Related Cases; and Notice of Pendency of Other Actions or Proceedings, *Creighton v. Toyota Motor Corp., et al.*, No. 10-cv-946 (C.D. Cal. Feb. 24, 2010) (Exhibit E); Notice of Related Case, *Choi v. Toyota Motor Corp., et al.*, No. 10-cv-154 (C.D. Cal. Feb. 22, 2010) (Exhibit F); Notice of Related Cases, *Miller v. Toyota Motor Sales, U.S.A., Inc., et al.*, No. BC431344 (Cal. Super. Ct. Mar. 2, 2010) (Exhibit G).

Safety has been central to Toyota's marketing of the Prius. However, immediately after the 2010 model year Toyota Prius went on sale to the public, consumers began to lodge complaints with Toyota and the National Highway Traffic Safety Administration ("NHTSA") regarding the existence of the Brake Defect. The NHTSA is part of the U.S. Department of Transportation and sets safety standards for motor vehicles and associated equipment, investigates possible safety defects, assures that products meet safety standards and are not defective (through recalls if necessary), and tracks safety-related recalls. The numerous consumer complaints regarding the Brake Defect led the NHTSA to open a formal investigation into the matter.

In fact, a February 4, 2010 NHTSA press release regarding the investigation states, in relevant part:

The National Highway Traffic Safety Administration (NHTSA) today announced that it is opening a formal investigation of the Toyota Prius Hybrid model year 2010 to look into allegations of momentary loss of braking capability while traveling over an uneven road surface, pothole or bump.

The Office of Defects Investigation has received 124 reports from consumers, including four reports alleging that crashes occurred. Investigators have spoken with consumers and conducted pre-investigatory field work. (emphasis added)

Consumers have filed similar complaints with the NHTSA arising from the defective braking system of the 2010 model year Lexus HS 250h.

After the announcement of the NHTSA investigation, Toyota revealed that it had in fact been aware of the design defect with the braking system of the Prius arising from a software failure with the Vehicles for months prior to the announcement of the NHTSA investigation. Toyota also said that it had instituted a software correction for the Brake Defect on Prius vehicles produced since January of 2010. On February 8, 2010, Toyota announced that it would conduct a recall “on approximately 133,000 2010 model year Prius vehicles and 14,550 Lexus Division 2010 HS 250h vehicles to update software in the vehicle’s anti-lock brake system (ABS).”

Toyota further announced:

The ABS, in normal operation, engages and disengages rapidly (many times per second) as the control system senses and reacts to tire slippage. Some 2010 Model Year Prius and 2010 HS 250h owners have reported experiencing inconsistent brake feel during slow and steady application of brakes on rough or slick road surfaces when the ABS is activated in an effort to maintain tire traction.

Toyota has responded to owner concerns with a running production change for [the] 2010 Prius that was introduced last month, improving the ABS response time, as well as the system's overall sensitivity to tire slippage. The production change for the HS 250h is planned for later this month.

Toyota’s recent admissions contradict its assertions regarding the safety of the Vehicles and constitute fraudulent concealment of facts that pose a threat to the safety of their customers and members of the public. In response to the recall, Kelley Blue Book, Co., Inc., the largest automobile valuation company in the United States, announced that it was adjusting down the

values of used Prius vehicles. Reportedly, the value of the 2010 model year Lexus HS 250h has also suffered a negative affect. As a result of the Brake Defect and Toyota's conduct, Movants and others similarly situated have suffered, and continue to suffer, injuries to which they are entitled immediate legal recourse.

Argument

A. Commonality of Actions

Movants submit that the ABS Actions should be transferred and coordinated for multidistrict litigation ("MDL") treatment. Such transfer and coordination is appropriate due to the substantial commonality of factual and legal questions presented in the individual cases at issue. Consolidation will "eliminate duplicative discovery, avoid inconsistent pretrial rulings, and conserve the resources of the parties, their counsel, and the judiciary." *In re Vioxx Prods. Liab. Litig.*, 360 F. Supp. 2d 1352, 1354 (J.P.M.L. 2005).

Moreover, all ten of the ABS Actions are class actions. The Judicial Panel on Multidistrict Litigation ("Panel") has long recognized that overlapping and parallel class actions asserting similar claims for recovery are particularly well-suited for consolidation. *See In re Chrysler Corp. Vehicle Prods. Liab. Litig.*, MDL No. 1239, 1998 LEXIS 15675, at *2 (J.P.M.L. Oct. 2, 1998) (ordering transfer where "the actions in this litigation involve common questions of fact concerning allegations by overlapping classes of defects in the paint of certain Chrysler vehicles that result in chipping, peeling and discoloration of the paint finish."); *In re Sugar Indus. Antitrust Litig.*, 395 F. Supp. 1271, 1273 (J.P.M.L. 1975) ("[T]ransfer of actions under § 1407 is appropriate, if not necessary, where the possibility of inconsistent class determinations exists."); *In re Hawaiian Hotel Room Rate Antitrust Litig.*, 438 F. Supp. 935, 936 (J.P.M.L. 1977) ("Section 1407 centralization is especially important to ensure consistent treatment of the

class action issues.”); *In re Plumbing Fixture Cases*, 298 F. Supp. 484, 493 (J.P.M.L. 1968) (holding that transfer was necessary to avoid “pretrial chaos in conflicting class action determinations.”).

Movants further submit that a court in the Central District of California should be designated as the MDL court for these actions. An appropriate transferee forum is usually one that (1) is not overtaxed with other MDL cases (2) has a related action pending on its docket (3) has a judge with some degree of expertise in handling the issues presented, and (4) is convenient to the parties. Manual for Complex Litigation § 22.33 (4th Ed. 2004); *see also In re Phenylpropanolamine (PPA) Products Liability Litigation*, 173 F. Supp. 2d 1377, 1380 (J.P.M.L. 2001) (“[C]entralization to this district permits the Panel to effect the Section 1407 assignment to a major metropolitan court that (i) is not currently overtaxed with other multidistrict dockets, and (ii) possesses the necessary resources to be able to devote the substantial time and effort to pretrial matters that this complex docket is likely to require.”). As demonstrated by the attached Distribution of Pending MDL Dockets, the Central District of California has a well-managed docket capable of ensuring timely and expeditious resolution of these consolidated actions. *See* Distribution of Pending MDL Dockets (Exhibit H). Moreover, four of ten ABS Actions, including Movants’ actions, are currently pending in the federal court in the Central District of California.

There are numerous qualified judges in the Central District of California. In fact, the Panel recently determined that Judge James V. Selna in the Southern Division of California “is a well regarded and skilled jurist” in its April 9, 2010 Transfer Order consolidating eleven actions in *In re: Toyota Motor Corp. Unintended Acceleration Marketing, Sales Practices, and Products Liability Litigation*, No. 2151 (the “Transfer Order”). *See* Transfer Order at 3, *In re: Toyota*

Motor Corp. Unintended Acceleration Marketing, Sales Practices, and Products Liability Litigation, MDL-2151 (No. 67). Movants have no objection to assignment of the ABS Actions to Judge James V. Selna in light of the Transfer Order. However, Movants believe the Transfer Order is not a decisive factor. *In re Amino Acid Lysine Antitrust Litig.*, 910 F. Supp. 696, 701 (J.P.M.L. 1995) (finding that three MDL litigations involving interrelated products and common defendants would likely result in overlapping discovery and other pretrial proceedings, but declining to transfer and expressing confidence that the judges and parties would effectively coordinate proceedings through cooperation and communication). As an alternative, the first-filed of the ABS Actions, *Choi v. Toyota Motor Corp., et al.*, Case No. 8:10-cv-154 (C.D. Ca. filed Feb. 8, 2010) was assigned to Judge Cormac J. Carney who is also an eminently qualified jurist seated in the Central District of California, Southern Division, as is Judge A. Howard Matz of the Central District of California, Western Division, before whom three of the ten ABS Actions, including two of Movants' actions, are currently pending².

The Central District of California is also convenient to the parties. The Southern Division is perhaps most convenient in light of the Transfer Order that, while not related to the ABS Actions, as further explained herein, do involve a similar group of defendants. However, both the Southern and Western Divisions of the Central District of California are convenient for the parties because, as the Panel stated in the Transfer Order, "Toyota maintains its United States corporate headquarters within this district, and relevant documents and witnesses are likely located there." Toyota's headquarters, as the Panel may recall, are located at 19001 S. Western

² By April 12, 2010 Order of the Clerk of the Central District of California, *Kramer v. Toyota Motor Corporation*, CV-10-01154 AHM, was transferred from Judge Matz to Judge Selna (Exhibit I). It is unclear to Movants whether the Clerk mistakenly believed *Kramer* to be an SUA case and therefore transferred it to Judge Selna pursuant to the Transfer Order, or whether the Clerk will be transferring all of the Central District of California Brake Defect cases to Judge Selna. If it is the former, Movant Kramer respectfully requests that the Panel assign her case to the same judge as the other Brake Defect cases.

Avenue, Torrance, California. In addition, California is the largest market for the Toyota Prius in the United States, which makes this jurisdiction particularly appropriate for these proceedings.

C. These Actions Should Not Be Transferred to the Same Docket as *In re: Toyota Motor Corp. Unintended Acceleration Marketing, Sales Practices, and Products Liability Litigation*, MDL No. 2151

It is important to note that the ABS Actions that are subject to this Motion involve completely different defects and vehicles than the cases at issue in the two recently-decided motions to transfer actions stemming from the widely-publicized complaints of sudden unintended acceleration (“SUA”) in certain Toyota vehicles (the “SUA Actions”), which were transferred on April 9, 2010 under the caption *In re: Toyota Motor Corp. Unintended Acceleration Marketing, Sales Practice, and Products Liability Litigation*, No. 2151. To the best of Movants’ knowledge, the SUA Actions do not have any questions of fact in common with the ABS Actions.³ In fact, none of the vehicles being recalled for the Brake Defect are also being recalled for SUA. Toyota provided the NHTSA with defect reports that include chronologies of events leading up to each respective recall, which describe in detail totally separate origins and

³ On September 29, 2009, November 25, 2009, and January 21, 2010 Toyota confirmed the existence of and described in detail two causes of SUA and steps the Company intended to take to remedy the problem. Those steps generally involved reconfiguring the shape of accelerator pedals, reconfiguring the driver side floor pan, and/or modifying the accelerator pedal assembly. Today, Toyota and the NHTSA are investigating yet a third cause of SUA, involving Toyota’s electronic throttle control system in some vehicles.

The SUA Actions revolve around these key dates and the ongoing investigations to varying degrees and were the basis for motions to consolidate before the Panel. *See* Motion for Transfer of Actions to the Central District of California for Coordinated Pretrial Proceedings Pursuant to 28 U.S.C. § 1407 and Incorporated Memorandum of Law, *In re: Toyota Motor Corp. Unintended Acceleration Marketing, Sales Practices, and Products Liability Litigation*, MDL-2151 (No. 1); Revised Motion of Plaintiffs for Transfer of Actions to the Eastern District of Louisiana Pursuant to US 28 U.S.C. § 1407 for Coordinated or Consolidated Pretrial Proceedings, *In re: Toyota Motor Corp. Unintended Acceleration Marketing, Sales Practices, and Products Liability Litigation*, MDL-2151 (No. 3); *see also* Toyota Defendants’ Response in Support of Transfer of Actions to the Central District of California for Coordinated Pretrial Proceedings Pursuant to 28 U.S.C. § 1407 at 3, *In re: Toyota Motor Corp. Unintended Acceleration Marketing, Sales Practices, and Products Liability Litigation*, MDL-2151 (No. 37).

evolutions of the Brake Defect and defects underlying SUA.⁴ Further, it is Movants' understanding that Toyota has retained separate counsel for defense of the ABS Actions and those affected by the Transfer Order.

The law provides that only civil actions involving "*one or more common questions of fact*" are eligible for transfer and consolidation under 28 U.S.C. § 1407(a). *See In re Environmental Protection Agency Pesticide Listing Confidentiality Litigation*, 434 F. Supp. 1235, 1236 (J.P.M.L. 1977) ("[S]ince these actions involve a common question of law and share few, if any, questions of fact, transfer under Section 1407 is inappropriate."). The ABS Actions arise out of a different defect in different vehicles culminating in a different recall and thus do not share the requisite common questions fact with the SUA Actions necessary to warrant transfer to the same docket under the law. *See In re Amino Acid Lysine Antitrust Litig.*, 910 F. Supp. 696, 700 (J.P.M.L. 1995) (motion to centralize an "amalgam" of antitrust cases involving three types of corn products and a common defendant denied "[n]otwithstanding . . . obvious points of intersection" upon finding, *inter alia*, the cases involved different products, different manufacturers, different classes of purchasers, and none of the cases involved all three products). Thus, transfer of the ABS Actions to the same docket as the SUA cases would be inappropriate, because pretrial rulings—especially with respect to class certification—are likely to be consistent and discovery is likely to be largely separate.

Conclusion

For the foregoing reasons, Movants respectfully request that the Panel grant their motion to transfer and coordinate the referenced actions pursuant to 28 U.S.C. § 1407, and that the

⁴ Toyota was required to provide these letters, which are also referred to as "defect reports", to the NHTSA in connection with the various recalls pursuant to 49 C.F.R. Part 573.

United States District Court for the Central District of California be designated as the MDL Court for these actions.

Dated: April 14, 2010

Respectfully submitted,

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*Attorney for Movant
Alexsandra Del Real*

EXHIBIT 2

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

Jessica M. Kramer

PLAINTIFF(S),

v.

Toyota Motor Corporation et al

DEFENDANT(S).

CASE NUMBER

CV 10-01154 AHM (FMOx)

NOTICE OF REASSIGNMENT OF CASE

To: ALL COUNSEL APPEARING OF RECORD

- ☒ Pursuant to Order of the Court filed 04/12/2010 you are hereby notified that this case has been transferred to the calendar of James V. Selna for:
- ☒ all further proceedings;
- ☐ any discovery matters that are or may be referred by the District Judge;
- ☐ any matters that are referred pursuant to General Order 05-07.
- ☐ other: _____
- ☐ All parties having consented to proceed before a United States Magistrate Judge, this case has been reassigned to Magistrate Judge _____ for all further proceedings.

On all documents subsequently filed in this case, please substitute the initials JVS after the case number in place of the initials of the prior judge so that the case number will read: CV 10-01154 JVS(FMOx). This is very important because documents are routed to the assigned judge by means of these initials.

The case file, under seal documents, exhibits, docket, transcripts or depositions may be viewed at the:

☐ Western ☒ Southern ☐ Eastern Division.

Traditionally filed subsequent documents must be filed at the ☐ Western ☒ Southern ☐ Eastern Division. Failure to file at the proper location will result in your documents being returned to you.

Clerk, U.S. District Court

04/13/2010

Date

By Robert R. Nadres

Deputy Clerk

cc: ☐ Previous Judge ☐ Statistics Clerk

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12 Attorneys for Plaintiff
13 JESSICA M. KRAMER on behalf of
14 herself and all others similarly situated

15 **UNITED STATES DISTRICT COURT**
16 **CENTRAL DISTRICT OF CALIFORNIA**
17 **SOUTHERN DIVISION**

18 JESSICA M. KRAMER, an individual, on
19 behalf of herself and all others similarly
20 situated,

21 Plaintiff,

22 v.

23 TOYOTA MOTOR CORPORATION;
TOYOTA MOTOR SALES, U.S.A.,
INC.;
24 TOYOTA MOTOR NORTH AMERICA,
INC., LEXUS and
25 DOES 1 through 10, inclusive,

26 Defendants.

CASE NO.: cv-10-1154 JVS (FMOx)

CLASS ACTION

**[PROPOSED] ORDER GRANTING
PLAINTIFF JESSICA M.
KRAMER'S EMERGENCY
APPLICATION FOR REMAND TO
MULTIDISTRICT LITIGATION
PANEL**

**[FILED PURSUANT TO THE
COURT'S ORDER DATED APRIL
16, 2010]**

Honorable James V. Selna Presiding

1 Plaintiff Jessica M. Kramer's ("Plaintiff") "Emergency Application for Remand
 2 to Multidistrict Litigation Panel" (the "Emergency Application"), having been filed
 3 pursuant to the Court's Order dated April 16, 2010, and the Court having considered
 4 the papers submitted with the Emergency Application, together with the Notices of
 5 Joinder filed in *Choi v. Toyota Motor Corp., et al.*, Case No. 8:10-cv-154, and *Del*
 6 *Real v. Toyota Motor Corp., et al.*, Case No. 8:10-cv-173, two related matters
 7 currently pending before this Court, and the files and records in each matter, and
 8 **GOOD CAUSE** appearing therefore, enters its Order as follows:

9 **IT IS HEREBY ORDERED** that Plaintiff's Emergency Application is
 10 **GRANTED**. As such, the above captioned action, together with the related actions
 11 *Choi v. Toyota Motor Corp., et al.*, Case No. 8:10-cv-154, and *Del Real v. Toyota*
 12 *Motor Corp., et al.*, Case No. 8:10-cv-173, are hereby remanded to the MDL Panel
 13 pursuant to Rule 7.6(c)(ii) of the *Rules of Procedure of the Judicial Panel on*
 14 *Multidistrict Litigation*.

15
 16 Dated: _____

 17 HON. JAMES V. SELNA
 18 DISTRICT COURT JUDGE
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EXHIBIT D

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Counsel for Plaintiff Alexsandra del Real

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

ALEXSANDRA DEL REAL,
Individually and on Behalf of all Others
Similarly Situated,

Plaintiff,

v.

TOYOTA MOTOR SALES, U.S.A.,
INC., and TOYOTA MOTOR CORP.,

Defendants

Case No.: CV10-00173 JVS (FMOx)

**PLAINTIFF ALEXSANDRA DEL
REAL'S EMERGENCY
APPLICATION FOR REMAND TO
MULTIDISTRICT LITIGATION
PANEL**

**[SUBMITTED PURSUANT TO
THE COURT'S ORDER DATED
APRIL 19, 2010]**

Judge: Hon. James V. Selna
Complaint Filed: February 12, 2010

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 Pursuant to this Court's April 19, 2010 Order re Applications for Remand (the
3 "Order"), plaintiff Alexsandra Del Real ("Plaintiff") hereby moves this Court for
4 remand of this action, together with *Choi v. Toyota Motor Corp., et al.*, Case No.
5 8:10-cv-154, and *Kramer v. Toyota Motor Corp., et al.*, Case No. 8:10-cv-1154, two
6 related matters currently pending before this Court, to the Multidistrict Litigation Panel
7 ("MDL Panel") as follows.

8 On April 19, 2010, this Court issued an Order permitting a party to file an
9 emergency application for remand to the MDL Panel if that party believes his/her case
10 was improperly transferred to the MDL docket in *In re: Toyota Motor Corp.*
11 *Unintended Acceleration Marketing, Sales Practices and Products Liability Litigation*,
12 MDL No.2151. As such, Plaintiff seeks the foregoing relief since the above captioned
13 action does **not** involve the sudden unintended acceleration ("SUA") of certain Toyota
14 vehicles, but rather braking system defects which are wholly unrelated to the SUA
15 allegations.

16 Plaintiff's claims arise from an alleged material defect in the ***anti-locking brake***
17 ***system*** ("ABS") of 2010 model year Toyota Prius automobiles and 2010 model year
18 Lexus HS 250h automobiles that causes a momentary loss of braking capability (the
19 "ABS Cases"). *See* Plaintiff's Complaint, Docket Entry ##1-2. Three other such
20 actions have been filed in the Central District of California and six other actions have
21 been filed in other courts throughout the country. An MDL motion was made, and
22 accepted by the MDL Panel, with respect to the ABS Cases on April 14, 2010 (the
23 "ABS MDL Motion"). A copy of the motion and accompanying brief (without
24 exhibits) are annexed to the Declaration of Vahn Alexander, as *Exhibit A*, filed
25 herewith.

1 Prior to the filing of the ABS MDL Motion, on April 9, 2010, the MDL Panel
2 issued a Transfer Order (the “Transfer Order”) in *In re: Toyota Motor Corp.*
3 *Unintended Acceleration Marketing, Sales Practices and Products Liability Litigation*,
4 MDL No.2151(No. 67), regarding a group of cases which arise from claims related to
5 the ***sudden unintended acceleration*** of certain models of Toyota vehicles (the “SUA
6 Actions”). To the best of Plaintiff’s knowledge, the SUA Actions and the ABS
7 Actions arise from ***completely different facts*** and affect two different groups of Toyota
8 vehicles.

9 Despite the foregoing, pursuant to Orders and Notices of the Clerk of the Central
10 District of California (the “Clerk”), dated April 12, 2010, the above captioned action
11 was transferred from the Honorable A. Howard Matz to the Honorable James V. Selna.
12 See Docket Entry ##17, 18. However, Plaintiff believes that the transfer was made in
13 the mistaken belief that the above captioned action was one of the SUA Actions which
14 should have been assigned to this Court pursuant to the Transfer Order.¹

15 Consequently, while Plaintiff certainly does not take issue with the above
16 captioned action being assigned to this Court as part of an ***ABS Cases MDL action***,
17 for the foregoing reasons, Plaintiff respectfully requests that this Court remand this
18 action, together with *Choi v. Toyota Motor Corp., et al.*, Case No. 8:10-cv-154, and
19 *Kramer v. Toyota Motor Corp., et al.*, Case No. 8:10-cv-1154, two related matters
20 currently pending before this Court, to the MDL Panel pursuant to Rule 7.6(c)(ii) of

21 ///

22 ///

26 ¹ That point was raised in the ABS MDL Motion with respect to the *Kramer*
27 action only because movants were not yet aware of the transfer of the *Del Real* action.

1 the Rules of Procedure of the Judicial Panel on Multidistrict Litigation, or as this Court
2 otherwise deems just and proper.

3
4 DATED: April 20, 2010

Respectfully submitted,

5 **FARUQI & FARUQI, LLP**

6
7 By: s/Vahn Alexander
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Counsel for Plaintiff Alexsandra del Real

CERTIFICATE OF SERVICE

I hereby certify that on April 20, 2010, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the e-mail addresses denoted on the attached Electronic Mail Notice List, and I hereby certify that I have mailed the foregoing document *via* the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

s/Vahn Alexander
VAHN ALEXANDER

Mailing Information for a Case 8:10-cv-00173-JVS-FMO

Electronic Mail Notice List

The following are those who are currently on the list to receive e-mail notices for this case.

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Manual Notice List

The following is the list of attorneys who are **not** on the list to receive e-mail notices for this case (who therefore require manual noticing). You may wish to use your mouse to select and copy this list into your word processing program in order to create notices or labels for these recipients.

- (No manual recipients)

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Counsel for Plaintiff Alexsandra del Real

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

ALEXSANDRA DEL REAL,
Individually and on Behalf of all Others
Similarly Situated,

Plaintiff,

v.

TOYOTA MOTOR SALES, U.S.A.,
INC., and TOYOTA MOTOR CORP.,

Defendants

Case No.: CV10-00173 JVS (FMOx)

**DECLARATION OF VAHN
ALEXANDER IN SUPPORT OF
PLAINTIFF ALEXSANDRA DEL
REAL'S EMERGENCY
APPLICATION FOR REMAND TO
MULTIDISTRICT LITIGATION
PANEL**

**[SUBMITTED PURSUANT TO
THE COURT'S ORDER DATED
APRIL 19, 2010]**

Judge: Hon. James V. Selna
Complaint Filed: February 12, 2010

1 I, VAHN ALEXANDER, declare as follows:

2 1. I am an attorney duly licensed to practice before this Court and a partner
3 with the law firm of Faruqi & Faruqi, LLP ("F&F"), counsel of record for plaintiff
4 Alexsandra Del Real ("Plaintiff") in the above captioned action. I have personal
5 knowledge of the matters stated herein and, if called upon, I could and would
6 competently testify thereto.

7 2. As noted in Plaintiff's emergency application filed herewith, Plaintiff's
8 claims arise from an alleged material defect in the *anti-locking brake system* ("ABS")
9 of 2010 model year Toyota Prius automobiles and 2010 model year Lexus HS 250h
10 automobiles which causes a momentary loss of braking capability (the "ABS Cases").
11 Three other such actions have been filed in the Central District of California and six
12 other actions have been filed in other courts throughout the country. As such, on April
13 14, 2010, plaintiffs Alexsandra Del Real, Michael Choi, and Jessica M. Kramer,
14 submitted a Multidistrict Litigation ("MDL") motion (the "ABS MDL Motion") which
15 was accepted by the MDL Panel. A copy of the motion and accompanying brief
16 (without exhibits) are attached hereto as *Exhibit A*.

17 I declare under penalty of perjury under the laws of the State of California that
18 the foregoing is true and correct. Executed this 20th day of April, 2010, at Los
19 Angeles, California.

20 s/Vahn Alexander
21 VAHN ALEXANDER
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CERTIFICATE OF SERVICE

I hereby certify that on April 20, 2010, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the e-mail addresses denoted on the attached Electronic Mail Notice List, and I hereby certify that I have mailed the foregoing document *via* the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

s/Vahn Alexander
VAHN ALEXANDER

Mailing Information for a Case 8:10-cv-00173-JVS-FMO

Electronic Mail Notice List

The following are those who are currently on the list to receive e-mail notices for this case.

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Manual Notice List

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- (No manual recipients)

EXHIBIT A

**BEFORE THE JUDICIAL PANEL
ON MULTIDISTRICT LITIGATION**

**IN RE: TOYOTA MOTOR CORP.
ANTI-LOCK BRAKE PRODUCTS
LIABILITY LITIGATION**

MDL Docket No. _____

**MOTION OF PLAINTIFFS KRAMER, CHOI AND DEL REAL FOR
TRANSFER OF ACTIONS TO THE CENTRAL DISTRICT OF CALIFORNIA
PURSUANT TO 28 U.S.C. § 1407 FOR COORDINATED PRETRIAL PROCEEDINGS**

Michael Choi, plaintiff in *Choi v. Toyota Motor Corp., et al.*, Case No. 8:10-cv-154, an action pending in the U.S. District Court for the Central District of California; Alessandra Del Real, plaintiff in *Del Real v. Toyota Motor Corp., et al.*, Case No. 8:10-cv-173, an action pending in the U.S. District Court for the Central District of California; and Jessica M. Kramer, plaintiff in *Kramer v. Toyota Motor Corp., et al.*, Case No. 2:10-cv-1154, an action pending in the U.S. District Court for the Central District of California (“Movants”), by and through the undersigned counsel, respectfully request that the Judicial Panel on Multidistrict Litigation enter an Order pursuant to 28 U.S.C. § 1407 transferring for coordination the cases listed in the Schedule of Actions attached as “Exhibit A” to Movants’ Brief in Support of Plaintiffs’ Motion for Transfer of Actions Pursuant to 28 U.S.C. § 1407.

Dated: April 14, 2010

Respectfully submitted,

/s/ Jill S. Abrams

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**BEFORE THE JUDICIAL PANEL
ON MULTIDISTRICT LITIGATION**

**IN RE: TOYOTA MOTOR CORP.
ANTI-LOCK BRAKE PRODUCTS
LIABILITY LITIGATION**

MDL Docket No. _____

**BRIEF IN SUPPORT OF PLAINTIFFS' MOTION FOR
TRANSFER OF ACTIONS PURSUANT TO 28 U.S.C. § 1407**

Michael Choi, Alexsandra Del Real, and Jessica M. Kramer, plaintiffs in *Choi v. Toyota Motor Corp., et al.*, Case No. 8:10-cv-154; *Del Real v. Toyota Motor Corp., et al.*, Case No. 8:10-cv-173; and *Kramer v. Toyota Motor Corp., et al.*, Case No. CV 10-01154(FMOx), respectively, actions currently pending in the U.S. District Court for the Central District of California ("Movants"), respectfully submit this brief in support of their Motion for Transfer of Actions to the U.S. District Court for the Central District of California Pursuant to 28 U.S.C. § 1407 for Coordinated Pretrial Proceedings.

Factual Background

Movants' claims arise out of a material defect in the anti-lock braking system ("ABS") of 2010 model year Toyota Prius automobiles and 2010 model year Lexus HS 250h automobiles (collectively, the "Vehicles") that causes a momentary loss of braking capability (the "Brake Defect") and Toyota's conduct regarding same.¹ To Movants' knowledge, ten related actions have been filed that arise from the same or substantially identical transactions, raise substantially identical questions of law and fact, and will require substantial duplication of labor if heard by different judges(the "ABS Actions").Of the ten actions, four (including Movants' actions) are presently pending in the Central District of California, two in the California Superior Court for

¹ For the purposes of this motion, "Toyota" refers to Toyota Motor Corporation, Toyota Motor Sales, U.S.A., Inc., and Toyota Motor North America, Inc.

Los Angeles County, and one each in the Middle District of Alabama, Eastern District of Kentucky, the District of Maryland and the Northern District of Texas. *See* Schedule of Actions (Exhibit A); Proof of Service (Exhibit B); Related Case Complaints and Dockets (Exhibit C); *see also* Notice of Related Cases; and Notice of Pendency of Other Actions or Proceedings, *Kramer v. Toyota Motor Corporation, et al.*, No. 10-cv-1154-AHM-FMO (C.D. Cal. Mar. 3, 2010) (Exhibit D); Notice of Related Cases; and Notice of Pendency of Other Actions or Proceedings, *Creighton v. Toyota Motor Corp., et al.*, No. 10-cv-946 (C.D. Cal. Feb. 24, 2010) (Exhibit E); Notice of Related Case, *Choi v. Toyota Motor Corp., et al.*, No. 10-cv-154 (C.D. Cal. Feb. 22, 2010) (Exhibit F); Notice of Related Cases, *Miller v. Toyota Motor Sales, U.S.A., Inc., et al.*, No. BC431344 (Cal. Super. Ct. Mar. 2, 2010) (Exhibit G).

Safety has been central to Toyota's marketing of the Prius. However, immediately after the 2010 model year Toyota Prius went on sale to the public, consumers began to lodge complaints with Toyota and the National Highway Traffic Safety Administration ("NHTSA") regarding the existence of the Brake Defect. The NHTSA is part of the U.S. Department of Transportation and sets safety standards for motor vehicles and associated equipment, investigates possible safety defects, assures that products meet safety standards and are not defective (through recalls if necessary), and tracks safety-related recalls. The numerous consumer complaints regarding the Brake Defect led the NHTSA to open a formal investigation into the matter.

In fact, a February 4, 2010 NHTSA press release regarding the investigation states, in relevant part:

The National Highway Traffic Safety Administration (NHTSA) today announced that it is opening a formal investigation of the Toyota Prius Hybrid model year 2010 to look into allegations of momentary loss of braking capability while traveling over an uneven road surface, pothole or bump.

The Office of Defects Investigation has received 124 reports from consumers, including four reports alleging that crashes occurred. Investigators have spoken with consumers and conducted pre-investigatory field work. (emphasis added)

Consumers have filed similar complaints with the NHTSA arising from the defective braking system of the 2010 model year Lexus HS 250h.

After the announcement of the NHTSA investigation, Toyota revealed that it had in fact been aware of the design defect with the braking system of the Prius arising from a software failure with the Vehicles for months prior to the announcement of the NHTSA investigation. Toyota also said that it had instituted a software correction for the Brake Defect on Prius vehicles produced since January of 2010. On February 8, 2010, Toyota announced that it would conduct a recall “on approximately 133,000 2010 model year Prius vehicles and 14,550 Lexus Division 2010 HS 250h vehicles to update software in the vehicle’s anti-lock brake system (ABS).”

Toyota further announced:

The ABS, in normal operation, engages and disengages rapidly (many times per second) as the control system senses and reacts to tire slippage. Some 2010 Model Year Prius and 2010 HS 250h owners have reported experiencing inconsistent brake feel during slow and steady application of brakes on rough or slick road surfaces when the ABS is activated in an effort to maintain tire traction.

Toyota has responded to owner concerns with a running production change for [the] 2010 Prius that was introduced last month, improving the ABS response time, as well as the system's overall sensitivity to tire slippage. The production change for the HS 250h is planned for later this month.

Toyota’s recent admissions contradict its assertions regarding the safety of the Vehicles and constitute fraudulent concealment of facts that pose a threat to the safety of their customers and members of the public. In response to the recall, Kelley Blue Book, Co., Inc., the largest automobile valuation company in the United States, announced that it was adjusting down the

values of used Prius vehicles. Reportedly, the value of the 2010 model year Lexus HS 250h has also suffered a negative affect. As a result of the Brake Defect and Toyota's conduct, Movants and others similarly situated have suffered, and continue to suffer, injuries to which they are entitled immediate legal recourse.

Argument

A. Commonality of Actions

Movants submit that the ABS Actions should be transferred and coordinated for multidistrict litigation ("MDL") treatment. Such transfer and coordination is appropriate due to the substantial commonality of factual and legal questions presented in the individual cases at issue. Consolidation will "eliminate duplicative discovery, avoid inconsistent pretrial rulings, and conserve the resources of the parties, their counsel, and the judiciary." *In re Vioxx Prods. Liab. Litig.*, 360 F. Supp. 2d 1352, 1354 (J.P.M.L. 2005).

Moreover, all ten of the ABS Actions are class actions. The Judicial Panel on Multidistrict Litigation ("Panel") has long recognized that overlapping and parallel class actions asserting similar claims for recovery are particularly well-suited for consolidation. *See In re Chrysler Corp. Vehicle Prods. Liab. Litig.*, MDL No. 1239, 1998 LEXIS 15675, at *2 (J.P.M.L. Oct. 2, 1998) (ordering transfer where "the actions in this litigation involve common questions of fact concerning allegations by overlapping classes of defects in the paint of certain Chrysler vehicles that result in chipping, peeling and discoloration of the paint finish."); *In re Sugar Indus. Antitrust Litig.*, 395 F. Supp. 1271, 1273 (J.P.M.L. 1975) ("[T]ransfer of actions under § 1407 is appropriate, if not necessary, where the possibility of inconsistent class determinations exists."); *In re Hawaiian Hotel Room Rate Antitrust Litig.*, 438 F. Supp. 935, 936 (J.P.M.L. 1977) ("Section 1407 centralization is especially important to ensure consistent treatment of the

class action issues.”); *In re Plumbing Fixture Cases*, 298 F. Supp. 484, 493 (J.P.M.L. 1968) (holding that transfer was necessary to avoid “pretrial chaos in conflicting class action determinations.”).

Movants further submit that a court in the Central District of California should be designated as the MDL court for these actions. An appropriate transferee forum is usually one that (1) is not overtaxed with other MDL cases (2) has a related action pending on its docket (3) has a judge with some degree of expertise in handling the issues presented, and (4) is convenient to the parties. Manual for Complex Litigation § 22.33 (4th Ed. 2004); *see also In re Phenylpropanolamine (PPA) Products Liability Litigation*, 173 F. Supp. 2d 1377, 1380 (J.P.M.L. 2001) (“[C]entralization to this district permits the Panel to effect the Section 1407 assignment to a major metropolitan court that (i) is not currently overtaxed with other multidistrict dockets, and (ii) possesses the necessary resources to be able to devote the substantial time and effort to pretrial matters that this complex docket is likely to require.”). As demonstrated by the attached Distribution of Pending MDL Dockets, the Central District of California has a well-managed docket capable of ensuring timely and expeditious resolution of these consolidated actions. *See* Distribution of Pending MDL Dockets (Exhibit H). Moreover, four of ten ABS Actions, including Movants’ actions, are currently pending in the federal court in the Central District of California.

There are numerous qualified judges in the Central District of California. In fact, the Panel recently determined that Judge James V. Selna in the Southern Division of California “is a well regarded and skilled jurist” in its April 9, 2010 Transfer Order consolidating eleven actions in *In re: Toyota Motor Corp. Unintended Acceleration Marketing, Sales Practices, and Products Liability Litigation*, No. 2151 (the “Transfer Order”). *See* Transfer Order at 3, *In re: Toyota*

Motor Corp. Unintended Acceleration Marketing, Sales Practices, and Products Liability Litigation, MDL-2151 (No. 67). Movants have no objection to assignment of the ABS Actions to Judge James V. Selna in light of the Transfer Order. However, Movants believe the Transfer Order is not a decisive factor. *In re Amino Acid Lysine Antitrust Litig.*, 910 F. Supp. 696, 701 (J.P.M.L. 1995) (finding that three MDL litigations involving interrelated products and common defendants would likely result in overlapping discovery and other pretrial proceedings, but declining to transfer and expressing confidence that the judges and parties would effectively coordinate proceedings through cooperation and communication). As an alternative, the first-filed of the ABS Actions, *Choi v. Toyota Motor Corp., et al.*, Case No. 8:10-cv-154 (C.D. Ca. filed Feb. 8, 2010) was assigned to Judge Cormac J. Carney who is also an eminently qualified jurist seated in the Central District of California, Southern Division, as is Judge A. Howard Matz of the Central District of California, Western Division, before whom three of the ten ABS Actions, including two of Movants' actions, are currently pending².

The Central District of California is also convenient to the parties. The Southern Division is perhaps most convenient in light of the Transfer Order that, while not related to the ABS Actions, as further explained herein, do involve a similar group of defendants. However, both the Southern and Western Divisions of the Central District of California are convenient for the parties because, as the Panel stated in the Transfer Order, "Toyota maintains its United States corporate headquarters within this district, and relevant documents and witnesses are likely located there." Toyota's headquarters, as the Panel may recall, are located at 19001 S. Western

² By April 12, 2010 Order of the Clerk of the Central District of California, *Kramer v. Toyota Motor Corporation*, CV-10-01154 AHM, was transferred from Judge Matz to Judge Selna (Exhibit I). It is unclear to Movants whether the Clerk mistakenly believed *Kramer* to be an SUA case and therefore transferred it to Judge Selna pursuant to the Transfer Order, or whether the Clerk will be transferring all of the Central District of California Brake Defect cases to Judge Selna. If it is the former, Movant Kramer respectfully requests that the Panel assign her case to the same judge as the other Brake Defect cases.

Avenue, Torrance, California. In addition, California is the largest market for the Toyota Prius in the United States, which makes this jurisdiction particularly appropriate for these proceedings.

C. These Actions Should Not Be Transferred to the Same Docket as *In re: Toyota Motor Corp. Unintended Acceleration Marketing, Sales Practices, and Products Liability Litigation*, MDL No. 2151

It is important to note that the ABS Actions that are subject to this Motion involve completely different defects and vehicles than the cases at issue in the two recently-decided motions to transfer actions stemming from the widely-publicized complaints of sudden unintended acceleration (“SUA”) in certain Toyota vehicles (the “SUA Actions”), which were transferred on April 9, 2010 under the caption *In re: Toyota Motor Corp. Unintended Acceleration Marketing, Sales Practice, and Products Liability Litigation*, No. 2151. To the best of Movants’ knowledge, the SUA Actions do not have any questions of fact in common with the ABS Actions.³ In fact, none of the vehicles being recalled for the Brake Defect are also being recalled for SUA. Toyota provided the NHTSA with defect reports that include chronologies of events leading up to each respective recall, which describe in detail totally separate origins and

³ On September 29, 2009, November 25, 2009, and January 21, 2010 Toyota confirmed the existence of and described in detail two causes of SUA and steps the Company intended to take to remedy the problem. Those steps generally involved reconfiguring the shape of accelerator pedals, reconfiguring the driver side floor pan, and/or modifying the accelerator pedal assembly. Today, Toyota and the NHTSA are investigating yet a third cause of SUA, involving Toyota’s electronic throttle control system in some vehicles.

The SUA Actions revolve around these key dates and the ongoing investigations to varying degrees and were the basis for motions to consolidate before the Panel. *See* Motion for Transfer of Actions to the Central District of California for Coordinated Pretrial Proceedings Pursuant to 28 U.S.C. § 1407 and Incorporated Memorandum of Law, *In re: Toyota Motor Corp. Unintended Acceleration Marketing, Sales Practices, and Products Liability Litigation*, MDL-2151 (No. 1); Revised Motion of Plaintiffs for Transfer of Actions to the Eastern District of Louisiana Pursuant to US 28 U.S.C. § 1407 for Coordinated or Consolidated Pretrial Proceedings, *In re: Toyota Motor Corp. Unintended Acceleration Marketing, Sales Practices, and Products Liability Litigation*, MDL-2151 (No. 3); *see also* Toyota Defendants’ Response in Support of Transfer of Actions to the Central District of California for Coordinated Pretrial Proceedings Pursuant to 28 U.S.C. § 1407 at 3, *In re: Toyota Motor Corp. Unintended Acceleration Marketing, Sales Practices, and Products Liability Litigation*, MDL-2151 (No. 37).

evolutions of the Brake Defect and defects underlying SUA.⁴ Further, it is Movants' understanding that Toyota has retained separate counsel for defense of the ABS Actions and those affected by the Transfer Order.

The law provides that only civil actions involving “*one or more common questions of fact*” are eligible for transfer and consolidation under 28 U.S.C. § 1407(a). *See In re Environmental Protection Agency Pesticide Listing Confidentiality Litigation*, 434 F. Supp. 1235, 1236 (J.P.M.L. 1977) (“[S]ince these actions involve a common question of law and share few, if any, questions of fact, transfer under Section 1407 is inappropriate.”). The ABS Actions arise out of a different defect in different vehicles culminating in a different recall and thus do not share the requisite common questions fact with the SUA Actions necessary to warrant transfer to the same docket under the law. *See In re Amino Acid Lysine Antitrust Litig.*, 910 F. Supp. 696, 700 (J.P.M.L. 1995) (motion to centralize an “amalgam” of antitrust cases involving three types of corn products and a common defendant denied “[n]otwithstanding . . . obvious points of intersection” upon finding, *inter alia*, the cases involved different products, different manufacturers, different classes of purchasers, and none of the cases involved all three products). Thus, transfer of the ABS Actions to the same docket as the SUA cases would be inappropriate, because pretrial rulings—especially with respect to class certification—are likely to be consistent and discovery is likely to be largely separate.

Conclusion

For the foregoing reasons, Movants respectfully request that the Panel grant their motion to transfer and coordinate the referenced actions pursuant to 28 U.S.C. § 1407, and that the

⁴ Toyota was required to provide these letters, which are also referred to as “defect reports”, to the NHTSA in connection with the various recalls pursuant to 49 C.F.R. Part 573.

United States District Court for the Central District of California be designated as the MDL Court for these actions.

Dated: April 14, 2010

Respectfully submitted,

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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

ALEXSANDRA DEL REAL,
Individually and on Behalf of all Others
Similarly Situated,

Plaintiff,

v.

TOYOTA MOTOR SALES, U.S.A.,
INC., and TOYOTA MOTOR CORP.,

Defendants

Case No.: CV10-00173 JVS (FMOx)

**[PROPOSED] ORDER GRANTING
PLAINTIFF ALEXSANDRA DEL
REAL'S EMERGENCY
APPLICATION FOR REMAND TO
MULTIDISTRICT LITIGATION
PANEL**

**[SUBMITTED PURSUANT TO
THE COURT'S ORDER DATED
APRIL 19, 2010]**

Judge: Hon. James V. Selna
Complaint Filed: February 12, 2010

1 Plaintiff Alessandra Del Real's ("Plaintiff") "Emergency Application for
 2 Remand to Multidistrict Litigation Panel" (the "Emergency Application"), having been
 3 filed pursuant to the Court's Order dated April 19, 2010, and the Court having
 4 considered the papers submitted with the Emergency Application, together with the
 5 emergency applications filed in *Choi v. Toyota Motor Corp., et al.*, Case No.
 6 8:10-cv-154, and *Kramer v. Toyota Motor Corp., et al.*, Case No. 8:10-cv-1154, two
 7 related matters currently pending before this Court, and the files and records in each
 8 matter, and **GOOD CAUSE** appearing therefore, enters its Order as follows:

9 **IT IS HEREBY ORDERED** that Plaintiff's Emergency Application is
 10 **GRANTED**. As such, the above captioned action, together with the related actions
 11 *Choi v. Toyota Motor Corp., et al.*, Case No. 8:10-cv-154, and *Kramer v. Toyota*
 12 *Motor Corp., et al.*, Case No. 8:10-cv-1154, are hereby remanded to the MDL Panel
 13 pursuant to Rule 7.6(c)(ii) of the Rules of Procedure of the Judicial Panel on
 14 Multidistrict Litigation.

15
 16 Dated: _____

17 HON. JAMES V. SELNA
 18 DISTRICT COURT JUDGE
 19

20 Submitted By:

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 26
 27
 28

CERTIFICATE OF SERVICE

I hereby certify that on April 20, 2010, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the e-mail addresses denoted on the attached Electronic Mail Notice List, and I hereby certify that I have mailed the foregoing document *via* the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

s/Vahn Alexander
VAHN ALEXANDER

Mailing Information for a Case 8:10-cv-00173-JVS-FMO

Electronic Mail Notice List

The following are those who are currently on the list to receive e-mail notices for this case.

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Manual Notice List

The following is the list of attorneys who are **not** on the list to receive e-mail notices for this case (who therefore require manual noticing). You may wish to use your mouse to select and copy this list into your word processing program in order to create notices or labels for these recipients.

- (No manual recipients)

EXHIBIT E

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. **8:10ML2151 JVS (FMOx)** Date April 30, 2010
 2:10CV00946 JVS(FMOx)
 2:10CV01154 JVS(FMOx)
 2:10CV01248 JVS(FMOx)
 8:10CV00154 JVS(FMOx)
 8:10CV00173 JVS(FMOx)

Title **IN RE: TOYOTA MOTOR CORP. UNINTENDED
ACCELERATION MARKETING, SALES PRACTICES,
AND PRODUCTS LIABILITY LITIGATION**
 Lisa Creighton, et al v. Toyota Motor Sales U.S.A., Inc. et al
 Jessica M. Kramer v. Toyota Motor North America, Inc. et al
 Lu Li v. Toyota Motor North America, Inc. et al
 Michael Choi v. Toyota Motor Sales, U.S.A., Inc., et al.
 Alessandra Del Real v. Toyota Motor Sales, U.S.A., Inc., et al.

Present: The James V. Selna
Honorable

Karla J. Tunis

Not Present

Deputy Clerk

Court Reporter

Attorneys Present for Plaintiffs:

Attorneys Present for Defendants:

Not Present

Not Present

Proceedings: (In Chambers) Order Remanding Action SACV 10-00154-JVS(FMOx) and Directing Clerk to Prepare Related Case Transfer Orders.

On April 16, 2010, the Court issued an Order inviting any party to file an application for remand if they believed that transfer to the In re: Toyota Motor Corp. Unintended Acceleration Marketing, Sales Practices, and Products Liability Litigation MDL docket was improvident. (10-2151, Doc. No. 4.) The Court finds that the five cases listed above were improvidently transferred to the MDL docket because none of the cases involve allegations of unintended acceleration. Rather, these cases involve allegations related to the braking systems in the Toyota Prius.

Accordingly, the Court remands the earliest filed action, Michael Choi v. Toyota Motor Corp., SACV 10-154 JVS (FMOx), to Judge Cormac J. Carney, the District Judge to whom this case was originally assigned. The Clerk's Office is directed to prepare Orders re Transfer Pursuant to General Order 08-05 (Related Case Transfers) on the

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. **8:10ML2151 JVS (FMOx)**

Date April 30, 2010

2:10CV00946 JVS(FMOx)

2:10CV01154 JVS(FMOx)

2:10CV01248 JVS(FMOx)

8:10CV00154 JVS(FMOx)

8:10CV00173 JVS(FMOx)

Title

**IN RE: TOYOTA MOTOR CORP. UNINTENDED
ACCELERATION MARKETING, SALES PRACTICES,
AND PRODUCTS LIABILITY LITIGATION**

Lisa Creighton, et al v. Toyota Motor Sales U.S.A., Inc. et al

Jessica M. Kramer v. Toyota Motor North America, Inc. et al

Lu Li v. Toyota Motor North America, Inc. et al

Michael Choi v. Toyota Motor Sales, U.S.A., Inc., et al.

Alexsandra Del Real v. Toyota Motor Sales, U.S.A., Inc., et al.

other four cases and forward them to Judge Carney for his consideration. Judge Carney has indicated his willingness to accept the additional case.

The Order to Show Cause in the Lu Li case is discharged. (10-1248, Doc. No. 31.)

cc: Hon. Cormac J. Carney

Initials of Preparer

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:

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kjt

EXHIBIT F

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

Jessica M. Kramer

Plaintiff(s),

v.

Toyota Motor North America, Inc., et. al.

Defendant(s).

CASE NUMBER:

CV10-01154 JVS (FMOx)

**ORDER RE TRANSFER PURSUANT
TO GENERAL ORDER 08-05
(Related Cases)**

CONSENT

I hereby consent to the transfer of the above-entitled case to my calendar, pursuant to General Order 08-05.

May 4, 2010
Date

Cormac J. Carney
United States District Judge

DECLINATION

I hereby decline to transfer the above-entitled case to my calendar for the reasons set forth:

Date

United States District Judge

REASON FOR TRANSFER AS INDICATED BY COUNSEL

Case SACV10-00154 CJC (RNBx) and the present case:

- ☒ A. Arise from the same or closely related transactions, happenings or events; or
☒ B. Call for determination of the same or substantially related or similar questions of law and fact; or
☒ C. For other reasons would entail substantial duplication of labor if heard by different judges; or
☐ D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.
☐ E. Involve one or more defendants from the criminal case in common, and would entail substantial duplication of labor if heard by different judges (applicable only on civil forfeiture action).

NOTICE TO COUNSEL FROM CLERK

Pursuant to the above transfer, any discovery matters that are or may be referred to a Magistrate Judge are hereby transferred from Magistrate Judge Fernando M. Olguin to Magistrate Judge Robert N. Block.

On all documents subsequently filed in this case, please substitute the initials CJC (RNBx) after the case number in place of the initials of the prior judge, so that the case number will read CV10-01154 CJC (RNBx). This is very important because documents are routed to the assigned judges by means of these initials. The case file, under seal documents, exhibits, docket, transcripts or depositions may be viewed at the ☐ Western ☒ Southern ☐ Eastern Division.

**Traditionally filed subsequent documents must be filed at the ☐ Western ☒ Southern ☐ Eastern Division.
Failure to file at the proper location will result in your documents being returned to you.**

cc: ☒ Previous Judge

☒ Statistics Clerk

May 21, 2010

**BEFORE THE JUDICIAL PANEL
ON MULTIDISTRICT LITIGATION**

**FILED
CLERK'S OFFICE**

**IN RE: TOYOTA MOTOR CORP.
ANTI-LOCK BRAKE MARKETING,
SALES PRACTICES, AND PRODUCTS
LIABILITY LITIGATION**

MDL Docket No. 2172

Proof of Service

I hereby certify that a true and correct copy of the Reply and this Certificate of Service was served by Email to the counsel listed on the attached service list on May 19, 2010.

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Docket: 2172 - IN RE: Toyota Motor Corp. Anti-Lock Brake Marketing, Sales Practices, and Products Liability Litigation

Status: Pending on / /

Transferee District: Judge:

Printed on 05/06/2010

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